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#### EXHIBIT III

The movants point to two developments to support their argument that there has been a significant change in circumstances. First, they argue that AT&T's acquisition of McCaw, if permitted by this Court and the FCC, will substantially change the cellular business by permitting entry of the nation's largest long distance carrier into the local cellular exchange business. This entry, they argue will place the BOC cellular systems at a substantial competitive disadvantage, thereby harming consumers. Second, they argue that entry into the wireless business is imminent in the form of SMR and PCS. They suggest that entry of these new providers will eliminate the need for equal access to preserve competition in the provision of long distance services to cellular subscribers. Neither of these developments justify the relief the BOCs seek.

The proposed final judgment that the Department has negotiated with AT&T refutes the BOCs' argument that AT&T will have different equal access rules. Rather, that proposed decree and the order proposed for the BOCs' motion applies consistent rules to both the BOCs and AT&T. The terms of the AT&T/McCaw judgment, if approved, would expand the scope of equal access to apply to McCaw cellular exchanges that do not currently provide equal access. As a result, that judgment will eliminate the competitive disadvantage that the BOCs claim they currently face. Ironically, granting the BOCs' motion would create the harm they claim they want to end -- placing a cellular provider in a position where it must provide equal access while competing with a provider that need not do so.

The BOCs' other contention is likewise without merit. As yet, there are no SMR or PCS providers of wireless telephony generally available today. It is, of course, possible that at some point these new technologies will offer wireless service in competition with today's

cellular duopolists. When it will happen and what effect, if any, it will have on competition in the market for cellular telephone service is now unknown.

The FCC has not yet assigned PCS licenses. Indeed, the Commission has not yet even said when licenses will be awarded. Once the licenses are assigned, the licensees must take a number of time-consuming steps before they can offer service. They must develop the necessary technology, obtain financing and build networks. The very nature of PCS, including the services to be provided and the technology to be employed, is not yet settled.<sup>34</sup> BellSouth itself told the FCC that "cellular systems and new PCS licensees will be competitors only to a very limited degree."<sup>35</sup> It is, of course, impossible to say how long it will take to develop PCS, but it appears that it will be some time before PCS service will have any impact on competition for wireless telephony. Any assertion that PCS has changed the competitive environment is premature at best.

Several firms are in the process of accumulating radio spectrum currently allocated to Special Mobile Radio (SMR) with the stated intention of offering wireless telephone service. While that service might be closer to deployment than PCS, when and if it will be available is not yet known. SMR providers currently offer a dispatch service that is functionally

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<sup>34</sup> See Peterson, "Positioning PCS on the Telecom Landscape," *Telephony*, 26 (December 13, 1993). Mr. Peterson is Manager of Market Research at Motorola's General System Sector, a prospective PCS manufacturer, and is positioned to be well informed on PCS.

<sup>35</sup> PCS Comments of BellSouth, *In the matter of Amendment of the Commission's Rules to Establish New Personal Communications Services* 48 n.96 (F.C.C. Nov. 9, 1992). BellSouth relied on a forecast by Telocator that "shows cellular service prices in 2002 remaining 14-67% higher than the price for 'personal telecommunications service' and as much as three times as expensive as telepoint service." *Id.*

distinct from cellular telephone service.<sup>36</sup>

Three firms are attempting to convert SMR spectrum to wireless telephone use. Nextel Communications Inc. is the only firm that has begun construction of an SMR system that would provide cellular-like telephony service. Nextel has noted that it could still face a number of difficulties, including having substantially less radio spectrum than that allocated to cellular telephone providers (which could cause its costs to be substantially higher), a limited number of equipment suppliers and a current inability to offer nationwide service. Nextel's filing also indicates that its service might not have adequate voice quality.<sup>37</sup>

This voice quality problem has also been noted by McCaw's Chief Operating Officer, who testified that Nextel's voice quality is currently poor. Mr. Barksdale noted that Nextel might have to halve its capacity to improve its voice quality, further increasing its costs.<sup>38</sup> As with PCS, the BOCs' assertion that SMR deployment constitutes a significant change in circumstances is, at best, premature.

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<sup>36</sup> Dispatch service is used by fleet dispatchers, such as those that issue assignments to taxicabs and utility repair trucks. Some SMR providers offer interconnection with the public switched telephone network; such service, however, is far less convenient than cellular service and is used infrequently. SMR customers who need mobile telephone service usually have SMR and cellular telephone equipment in their vehicles.

<sup>37</sup> Nextel Communications, Inc., Securities and Exchange Commission, Form S-3, pp. 28, 36 (February 8, 1994).

<sup>38</sup> Deposition of James Barksdale, June 28, 1994, 218-221 (Exh. I hereto). Mr. Barksdale's deposition was taken during the Department's investigation of the AT&T/McCaw transaction. Presumably, Mr. Barksdale had an incentive to emphasize the likelihood of Nextel's success as an entrant into the mobile telephone business.

(e) Schedules containing joint toll rates or charges participated in by telephone corporations not subject to the jurisdiction of this commission shall be filed by the telephone corporation which is subject to the jurisdiction of the commission.

(f) A telephone corporation issuing a joint publication shall send copies to each telephone corporation party thereto as soon as issued. Joint publications may be issued only when duly executed powers of attorney or concurrences have been filed with the commission.

**630.4 Filing of contracts.** (a) Contracts between public utilities for the sale, purchase, or interchange of electricity, gas, steam, or water need not be according to rate schedule filed as required by section 630.3 of this Part when such contracts are limited to service to be used by the purchasing utility in the conduct of its utility business (including supply to concessionaires who occupy space in the property of such utility and who furnish service for the convenience of the customers of said utility) or to be supplied to another public utility for use in a utility business; all other contracts for electricity, gas, steam, or water must be according to the provisions in appropriate service classifications duly filed and posted. Two copies, one of which shall be certified, of all such contracts not according to service classifications in rate schedules shall be filed with this commission not later than 30 days after execution. Such copies shall be filed by the seller. If the seller is not subject to the jurisdiction of the commission, such copy shall be filed by the party which is subject to the jurisdiction of the commission. Contracts so filed shall be numbered in consecutive order by the party filing them.

(b) Contracts filed under this section, which by reference include provisions of tariffs filed with the Federal Power Commission shall be accompanied by copies of such provisions. Whenever revisions are made to the tariffs filed with the Federal Power Commission which affect the terms of the contract, such revisions shall also be filed with the contracts.

(c) Copies of contracts filed in accordance with this section shall have a title page on which shall be shown the contract number, the number of the contract to be superseded, if any, the names of the parties thereto, the date of execution, the effective date, the term of contract, and the date of termination. (See Appendix 5-A, Form A.)

**630.5 Responsibility for filing.** (a) This Part, prescribed under authority of the statute, impose upon each corporation and municipality the duty of filing with the commission copies of its schedules showing all rates and charges made, established, or enforced, or to be charged or enforced, all forms of contract or agreement, except as provided in section 630.4 and all rules and regulations relating thereto. The acknowledgment of the receipt of any schedule by the commission, or the fact that any schedule, amendment, supplement, or statement is in the files of the commission shall be without prejudice to investigation and determination by the commission thereafter as to the lawfulness thereof, either upon complaint or on its own motion, and without prejudice to suspension, change, or rejection of the same in any particular as may be provided by law.

(b) Corporations and municipalities shall file schedules and contracts as provided under this Part immediately upon becoming subject to the jurisdiction of the commission.

#### FILING PROCEDURES

**630.10 Number of copies.** (a) Telegraph and telephone corporations shall file three copies of all schedules, amendments, and supplements thereto, and statements.

(b) All schedules, amendments, supplements, and statements thereto, shall be accompanied by a letter of transmittal in duplicate addressed "Public Service Commission, State of New York, 3 Empire State Plaza, Albany, NY 12223". If acknowledgment

be desired, such a letter shall be in triplicate and shall be accompanied by a self-addressed envelope. (See Appendix 5-A, Form B.)

**Historical Note**

Sec. amd. filed Jan. 24, 1990 eff. Jan. 25, 1990.

**630.11 Information to accompany letter of transmittal.** In the case of schedules or amendments thereto, except those published under authority of an order of the commission, each letter of transmittal shall be accompanied by the following information.

- (a) The changes which are proposed to be made and the reason for each change.
- (b) An estimate of the following items in connection with each service classification or rate table in which any change is made in rates, rentals, or charges, together with a statement of the nature and extent of the data upon which such estimate is based:
  - (1) The number of customers or customers' bills increased.
  - (2) The number of customers or customers' bills decreased.
  - (3) The number of customers or customers' bills not affected.
  - (4) The gross increase in revenues.
  - (5) The gross decrease in revenues.

(c) When a new service classification or service offering is filed covering new territory or providing for service to new customers only, so that there is no change in any existing service classification and no transfer of customers from an existing service classification or service offering to the new one, the above information need not be furnished but a statement shall be filed stating the purpose and reason for the new service classification or service offering, the basis of the rates, the estimated annual revenue to be derived therefrom and the estimated number of customers to be served.

**630.12 Notice required.** (a) Except as provided by sections 630.13, 630.14, 630.15, 630.34, 630.46, 630.47 and 630.48, every schedule, amendment, or supplement thereto shall be filed with the commission, as hereinbefore provided, not less than 30 days prior to the date on which it is proposed to be made effective.

(b) A request to postpone the effective date of a schedule previously filed shall be made to the Secretary. The Secretary is hereby delegated the authority to approve changes to filed schedules which postpone the effective date of such filed schedules and to allow such postponement to take effect, for good cause shown, on less than thirty days' notice to the Commission and without publication of notice to the public. The procedure set forth in section 630.13(b) through (d) of this Part shall be followed to effectuate the postponement of the effective date of a filed schedule.

**Historical Note**

Sec. amds. filed: March 12, 1980; Dec. 7, 1982; Jan. 24, 1990 eff. Jan. 25, 1990. Amended (a); added (b).

**630.13 Short notice.** (a) Except as provided in section 630.12(b) of this Part, the power of the Public Service Commission to permit changes in existing schedules on less than 30 days' notice will be exercised only in cases where an emergency or other justifying conditions are demonstrated.

(b) Any corporation or municipality desiring permission to change an existing schedule on less than 30 days' notice shall file with the commission a schedule, amendment, or supplement containing the proposed change, bearing an effective date not less than 30 days after filing, and an application as prescribed by Form C, Appendix 5-A requesting authority to put such schedule, amendment, or supplement into effect on such earlier date as is desired.

(c) If the application be granted, a special permission order will be issued specifying the date on which such schedule, amendment, or supplement shall become effective.

(d) On schedules, amendments, or supplements authorized to be made effective on less than 30 days notice, a notation in the following form shall be shown:

"Effective (date) \_\_\_\_\_, under authority of Public Service Commission,  
State of New York, Special Permission Order No. \_\_\_\_\_, dated \_\_\_\_\_."

(1) In the case of an entire schedule, the notation shall appear on each leaf.

(2) The corporation or municipality shall notify the commission in writing, not more than 15 days after the date of the special permission order that the above notation has been placed upon all schedules, amendments, or supplements on file in its offices and kept open to public inspection.

#### Historical Note

Sec. amd. filed Jan. 24, 1990 eff. Jan. 25, 1990.

**630.14 Short notice radio-telephone service.** The Public Service Commission has determined that it is in the public interest to permit rates for radio-telephone service to fluctuate freely between the maximum and minimum rates established in filed tariffs. Because good cause for price flexibility has been shown for this industry, changes in the maximum and minimum rates, except major changes as defined by Public Service Law, section 92(2), may become effective immediately upon compliance with the notice provisions of State Administrative Procedure Act, section 202(2)\*. All companies increasing or decreasing a charge within the applicable maximum and minimum rates shall notify affected customers and the commission of the new charge no later than the date the charge is first applied.

#### Historical Note

Sec. filed March 12, 1980 eff. March 12, 1980.

**630.15 Short notice—resale of telephone service.** The Public Service Commission has determined that it is in the public interest to permit liberal modification of service offerings within the limits authorized by a reseller's certificate of public convenience and necessity. It has also determined that it is in the public interest to permit rates for resale of telephone services to fluctuate freely between the maximum and minimum rates established in filed tariffs. Because good cause for flexibility in service offerings and rates has been shown for this industry, changes in the maximum and minimum rates, except major rate changes as defined by Public Service Law, section 92(2), may become effective immediately upon compliance with the notice provisions of State Administrative Procedure Act, section 202(2). All companies increasing or decreasing a charge within the applicable maximum and minimum rates or making a service change shall notify affected customers and the commission of the new charge or service change no later than the date the charge is first applied or the the date the service change is first implemented.

#### Historical Note

Sec. filed Dec. 7, 1982 eff. Dec. 7, 1982.

### FORM AND CONSTRUCTION OF SCHEDULES

**630.20 Designation.** Electric, gas, steam, telegraph, telephone and water schedules shall be issued in separate series. The schedules in each series shall be numbered in consecutive order. The schedule number shall have as a prefix "P.S.C. No.", and as a suffix "Electricity", "Gas", "Steam", "Telegraph", "Telephone", or "Water", as appropriate, and the schedule or schedules to be superseded, if any, shall be shown.

**630.21 Arrangement.** Schedules shall be prepared and arranged as follows: (See Appendix 5-A.)

- (a) Front Cover or Title Page (Form D)
- (b) Table of Contents (Form E)
- (c) General Information (Form F or G)
- (d) Service Classifications or Rate Tables (Form H, I, or J)
- (e) Supplements (Form K)
- (f) Statements (if bound with schedule)

#### EXHIBIT IV

\* The NOTICE Provisions of the State Administrative Procedure Act do not apply to cellular carriers (Section 102(2)(b)(xiii))

- (g) Orders of the Commission (if applicable)
- (h) Back Cover

**630.22 Preparation.** (a) The front and back covers of each schedule shall be of manila, bristol, or similar durable, flexible material, not more than  $9\frac{3}{4} \times 11\frac{1}{2}$  inches in size. The table of contents, general information, service classifications, rate tables, supplements, and statements shall be prepared on hard finished, durable white paper, loose-leaf sheets,  $8\frac{1}{2} \times 11$  inches in size. Only one side of the sheet shall be used. Typewriting, mimeographing, or any printing process may be used. If typewriting is used, an original must be filed. Photographic copies or reproductions by hectograph or similar process shall not be used for filing with the commission or for public inspection. Alterations or erasures will not be permitted. There shall be a margin of not less than one inch at the top, bottom, and left side, and one-half inch at the right side. No writing shall appear in any margin at the time of filing.

(b) References herein to *leaf* or *leaves* also apply to existing schedules which are composed of *parts*, *sections*, *pages*, and *sheets*.

(c) Notations or markings shall not be made on any schedule, supplement, or statement, except as specifically provided for in sections 630.13, 630.45, 630.46, and 630.49 of this Part.

(d) Amendments, supplements, and statements to schedules on file with the commission, shall be of the same size as the schedule to which they apply.

(e) References to localities outside of the State of New York shall include the name of the state.

**630.23 Numbering of leaves.** When a complete schedule is filed, each leaf, except the front cover, which in all cases shall be considered as Leaf No. 1, shall be issued as an original leaf consecutively numbered. Example: "Original Leaf No. 2", "Original Leaf No. 3", etc.

**630.24 Forms of contract or agreement.** Except as provided under section 630.4 of this Part, where a corporation or municipality requires an applicant to make written application for service, each form of contract or agreement shall provide for service under the regularly filed rates, charges, or rentals and shall be shown either as a part of each service classification or rate table to which it is applicable or under general information, with reference thereto in each service classification or rate table to which it is applicable. Each form shall show either therein or by reference to the schedule, the nature and extent of the service to be rendered, the rates and charges to be made, all rules and regulations applicable, and all privileges and facilities granted or allowed.

**630.25 Service classifications and rate tables.** (a) Each service classification and rate table shall be complete in itself, except that reference may be made to rules and regulations appearing in the general information section of the schedule or in a separate general information schedule. General rules and regulations appearing or referred to in a schedule under general information shall apply to service to be furnished under each service classification and rate table unless otherwise expressly provided. Any exception to the application of a general rule or regulation must be clearly stated.

(b) Service classifications shall be numbered consecutively commencing with No. 1. Rate tables shall be arranged by parts and alphabetically by exchange.

#### CHANGES

**630.30 Amendment of schedules.** (a) All changes in, additions to, or eliminations from a schedule shall be made by the reissue of the entire leaf or leaves affected by such change, addition, or elimination, or by the reissue of the entire schedule.



(b) When a leaf is first revised, the new leaf shall be designated as "First Revised Leaf No. \_\_\_\_\_ superseding Original Leaf No. \_\_\_\_\_", on the next revision, as "Second Revised Leaf No. \_\_\_\_\_, superseding First Revised Leaf No. \_\_\_\_\_", etc.

(c) An amendment to or reissue of, an adopted schedule shall indicate the name of the predecessor in connection with the P.S.C. number.

**630.31 Additional leaves, service classifications, and rate tables.** (a) When changes or additions require more space, one or more leaves shall be issued to which the same leaf number shall be given with a letter suffix; for example, if changes be made in Original Leaf No. 2 and more than one leaf is required to show the changed or new matter, the new leaf shall be issued as "First Revised Leaf No. 2 superseding Original Leaf No. 2", and the added leaf shall be issued as "Original Leaf No. 2-A", a second added leaf shall be issued as "Original Leaf No. 2-B", etc.

(b) When additional service classifications are to be established, the leaves containing such classifications shall follow the last leaf in the schedule and be given the next consecutive leaf and classification number; for example, if the last leaf in the schedule is No. 10, the first added service classification shall be shown on Original Leaf No. 11, and shall bear the next consecutive service classification number.

(c) When additional exchanges are to be established, rate tables shall be inserted in alphabetical arrangement by exchange.

**630.32 Cancellations.** (a) If the entire matter on a leaf is to be eliminated, a revised leaf shall be issued bearing a statement to that effect.

(b) If a service classification or service offering be canceled, the number of the leaf or leaves on which it formerly appeared shall not be used again in the same schedule except to restore the canceled service classification or service offering, and shall state under which classification service of similar characteristics will be available.

EXHIBIT IV

*Example:* "Service Classification No. \_\_\_\_\_ is hereby canceled. On and after the effective date hereof, service of the characteristics formerly supplied thereunder will be furnished under Service Classifications Nos. \_\_\_\_\_ or \_\_\_\_\_, upon application by the customer pursuant to the terms and conditions thereof."

(c) If the type of service furnished under a canceled service classification is to be entirely discontinued, the superseding leaf shall so state.

*Example:* "Service Classification No. \_\_\_\_\_ is hereby canceled. Service of the characteristics heretofore furnished thereunder (specifying such characteristics as are discontinued) will not be furnished after the effective date hereof."

**630.33 Insertion of revisions.** Revised leaves, when issued, shall be placed in the schedule immediately preceding the leaves which they are to supersede. On the date when such a revised leaf becomes effective the leaf superseded shall be removed from the schedule. New original leaves shall be properly placed in the schedule according to leaf number when issued. This section applies only to schedules kept open for public inspection.

**630.34 Numbering of cancellations.** If a schedule, amendment, supplement, or statement be canceled under authority of or in compliance with an order of the commission, the number which it bears shall not be used again. The schedule, amendment, supplement, or statement, issued following the canceled schedule, amendment, supplement or statement shall bear a notation showing such cancellation.

*Example:* Third Revised Leaf No. 2  
Superseding First Revised Leaf No. 2  
(Second Revised Leaf No. 2 Canceled)

**630.35 Numbering of rejections.** A schedule, amendment, supplement, or statement received for filing too late to give the commission the notice required by law or prescribed by order of the commission, or which fail to comply with the rules of this Part, are subject to rejection by action of the commission. If a schedule, amendment, supplement, or statement be rejected, the number which it bears shall not be used again. The schedule, amendment, supplement, or statement issued in lieu of such rejected schedule, amendment, supplement, or statement shall bear a notation showing such rejection.

*Example:* Third Revised Leaf No. 2  
Superseding First Revised Leaf No. 2  
Issued in lieu of Second Revised Leaf No. 2  
Rejected by the Public Service Commission

**630.36 Substitutions or withdrawals.** Except as provided under section 630.35, no schedule, amendment, supplement, or statement duly filed with the commission will be returned. No substitution for or withdrawal of any schedule, amendment, supplement, or statement filed with the commission will be permitted.

#### NOTATIONS ON LEAVES AND SUPPLEMENTS

**630.45 Ordered revisions.** When rates, charges, rules, or other provisions, are prescribed by order of the commission, the changes made pursuant to such order shall be established by amendments to or reissue of the schedule or schedules affected. Each leaf containing rates, charges, rules, or other provisions, established pursuant to an order of the commission, shall bear the following notation:

"Issued in compliance with order of the Public Service Commission dated \_\_\_\_\_  
in Case \_\_\_\_\_"

**630.46 Authorized revisions.** When rates, charges, rules, or other provisions are authorized to be filed by order of the commission, the changes made under such authority shall be established by amendments to or reissue of the schedule or schedules affected. Each leaf containing rates, charges, rules, or other provisions established under authority of an order of the commission shall bear the following notation:

"Issued under authority of order of the Public Service Commission dated \_\_\_\_\_  
in Case \_\_\_\_\_"

**630.47 Adoption by successor.** (a) Upon the change of name or upon transfer of franchise or other operating rights from one corporation or municipality to another, the successor shall immediately file a notice adopting the publications issued under this Part and in effect [See Appendix 5-A, Form O] or issue new publications in lieu thereof.

(b) A consecutively numbered supplement shall be issued to each schedule then in effect by the successor corporation or municipality substantially as follows:

"Supplement No. \_\_\_\_\_ to P.S.C. No. \_\_\_\_\_ (Electricity, Gas, Steam, Telegraph, Telephone, or Water), filed by (name of predecessor corporation or municipality)"

"The (name of corporation or municipality) hereby adopts, ratifies, and in every respect makes its own as if the same had been originally filed by it, P.S.C. No. \_\_\_\_\_ (Electricity, Gas, Steam, Telegraph, Telephone, or Water), filed with the Public Service Commission, State of New York, by (name of predecessor corporation or municipality)."

(1) Such supplement may be made effective as of the date filed with the commission.

(c) Every adopted schedule shall be reissued by the successor corporation or municipality under the proper P.S.C. number in its series within one year after the date of adoption.

(d) Every adopted contract shall be renumbered by the successor corporation or municipality in its series within 30 days after the date of adoption and the commission shall be notified.

(e) When a water company is being discontinued and the territory is to be transferred to a water district, a supplement shall be filed by the corporation bearing a notice substantially as follows:

"The rules, rates, and regulations contained in this schedule are hereby canceled. The works and system of the (name of company) were transferred on (date) to Water District No. \_\_\_\_\_ of the Town of \_\_\_\_\_ in accordance with permission granted by the Public Service Commission in Case \_\_\_\_\_."

(1) Such supplement may be made effective as of the date filed with the commission.

**630.48 Supplements.** Except as authorized by the commission, or as provided by section 630.47, supplements shall be issued for the following purposes only [See Appendix 5-A Form K]:

(a) When a schedule, amendment, supplement, or statement is to be canceled, or when through error or omission a later issue failed to supersede a previous issue, a consecutively numbered supplement shall be issued bearing notice in substantially the following form:

"(Here list schedule, amendment, supplement, or statement to be canceled) is (are) hereby canceled. (Here list reason for cancellation)."

(b) When a schedule, amendment, supplement, or statement is suspended by order of the commission, a consecutively numbered supplement shall be issued bearing notice in substantially the following form:

"By order of the Public Service Commission, State of New York, made \_\_\_\_\_, in Case \_\_\_\_\_ (Here list suspended schedule, amendment, supplement or statement) has (have) been suspended to and including \_\_\_\_\_. Pending restoration, reissue or cancellation, the rates, rules and regulations in (Here list schedule, amendment, supplement or statement, which it was proposed to supersede) will apply."

(1) Each leaf or portion thereof affected shall be marked as indicated in section 630.49 of this Part.

(2) Suspension supplements shall not bear an effective date, but must show the date on which issued.

(c) When the effective date of a schedule, amendment, supplement or statement is to be postponed, a consecutively numbered supplement shall be issued in substantially the following form:

"The effective date of (Here list schedule, amendment, supplement or statement to be postponed) is (are) hereby postponed to \_\_\_\_\_."

(1) When the supplement becomes effective, each leaf or portion thereof affected shall be noted as indicated in section 630.49 of this Part.

**630.49 Notations on schedules.** The following notations are prescribed for marking schedules affected by orders of the commission. Where an entire schedule is affected, each leaf shall be marked. Where only a portion of a leaf is affected, the appropriate notation shall be referred to such portion by an asterisk or other suitable symbol.

(a) Where one or more leaves are suspended by order of the commission, each suspended leaf shall be marked with a notation substantially as follows:

SUSPENDED  
Through \_\_\_\_\_  
In Case \_\_\_\_\_  
See Supplement No. \_\_\_\_\_

(b) Where a suspension is vacated, the following notation shall be added:

Suspension in Case \_\_\_\_\_  
VACATED. See Supplement No. \_\_\_\_\_

(c) Where suspended matter is ordered canceled, the following notation shall be added:

Suspended matter in Case \_\_\_\_\_  
Ordered CANCELED by order dated \_\_\_\_\_  
See Supplement No. \_\_\_\_\_

(d) Where the effective date of one or more leaves is postponed, the following notation shall be placed on the leaf or leaves as near as possible to the effective date:

Effective date postponed to \_\_\_\_\_ (date)  
See Supplement No. \_\_\_\_\_

(e) Where rates are allowed to become effective under section 113 of the Public Service Law, the following notation shall be placed on the leaf or leaves containing the rates:

Effective \_\_\_\_\_ under Section 113  
of the Public Service Law in case \_\_\_\_\_

(f) Where rates have been continued unchanged subsequent to the completion of a section 113 proceeding, the following notation shall be added to the leaves affected:

"Case Closed \_\_\_\_\_"  
(date)

(g) For notation in compliance with special permission authority, see section 630.13 of this Part.

**ESCALATOR CLAUSES**

**630.55 City and village utility revenue tax surcharges.** (a) Where provisions are made in telephone or telegraph schedules for automatic adjustment of utility revenue tax surcharges in response to an enactment whereby a city or village levies a new tax on utility gross revenues, repeals such a tax, or changes the rate of such a tax, corporations subject to the tax may elect to file statements relative to their schedules, in lieu of amendments. Such statements shall not be a part of the schedule and shall not bear a leaf designation. Statements to each schedule shall be numbered consecutively.

(b) A copy of the effective statement will be kept available with each schedule to which it applies and may be attached to or bound with the schedule. If bound with the schedule, statements will follow all leaves and supplements that are a part of the schedule.

(c) Every such statement shall be filed not less than 15 business days before the date on which it is proposed to be effective, and no sooner than the date of the tax enactment to which the statement responds, shall become effective no sooner than the date when the tax enactment is filed with the Secretary of State; shall be applicable to bills subject to the tax enactment that are rendered on or after the effective date of the statement; and shall be canceled not more than five business days after the tax enactment either ceases to be effective or is modified so as to reduce the tax rate.

**Historical Note**

Sec. repealed, new filed Oct. 29, 1981 eff. Oct. 29, 1981.

**630.56-630.57****Historical Note**

Secs. repealed, filed Oct. 29, 1981 eff. Oct. 29, 1981.

**POWERS OF ATTORNEY AND CONCURRENCES**

**630.65 Powers of attorney.** (a) A telephone corporation may authorize another telephone corporation to file its toll schedules and revisions thereto, or concurrences by power of attorney filed with the commission as prescribed by Form L, Appendix 5-A, of this Title, *infra*. The original copy shall be filed with the commission and the duplicate furnished to the telephone corporation to which power of attorney is given. Such authority may not contain authority to delegate to another the power thereby conferred.

(b) Powers of attorney shall be consecutively numbered, and prepared on hard finished, durable white paper 8½ × 11 inches in size.

(c) A telephone corporation granting authority to another telephone corporation to publish and file certain of its rates, charges, rules, or regulations shall not, in its own publications, publish rates, charges, rules or regulations that conflict with or duplicate those which are published by such authorized other telephone corporation.

(d) Authority granted under this section may be revoked upon 60 days' notice to the commission and to the telephone corporation to which power of attorney is given, as prescribed by Form N, Appendix 5-A, of this Title, *infra*.

**630.66 Concurrences.** (a) A concurrence may be given by a telephone corporation to embrace joint schedules issued by another telephone corporation to which the concurring corporation is a party. The original copy of the concurrence, as prescribed by Form M, Appendix 5-A, of this Title, *infra*, shall be filed with the commission and a duplicate furnished to the corporation to which concurrence is given. Concurrences shall be filed immediately by the issuing corporation.

(b) Concurrences shall be consecutively numbered by the corporation issuing the concurrence, and shall be prepared on hard finished, durable white paper 8½ × 11 inches in size.

(c) Where a concurrence confers authority to name rates of the telephone corporation giving concurrence, schedules shall be issued by the telephone corporation to which concurrence is given under its own P.S.C. numbers, and the telephone corporation giving such concurrence shall be shown as a participating corporation. The filing of such schedules will constitute filing for all lawfully concurring telephone corporations, and they may be used by concurring telephone corporations for public inspection as required by section 630.3 of this Part. The telephone corporation to which concurrence is given may apply for permission to make a joint schedule effective on short notice as provided in section 630.13 of this Part. The application shall be made on the prescribed form, and must include a statement that it is made on behalf of all parties to the schedule, and that formal concurrence is on file with the commission.

(d) A concurrence may be revoked by filing notice of such revocation as prescribed by Form N, Appendix 5-A, of this Title, *infra*, with the commission and serving same upon the telephone corporation to which such concurrence was given. Such notice must specify the date upon which revocation is to be made effective and must give not less than 60 days' notice to the commission and to the telephone corporation to which concurrence was given. Corresponding correction of schedules shall be made by amending or reissuing such schedules on not less than 30 days' notice to be effective upon the effective date of the revocation.

(e) A concurrence does not confer authority to cancel schedules of concurring corporations and schedules issued under concurrences shall not bear notation of cancellation of schedules of concurring telephone corporations. Such cancellations must be made by the telephone corporation which issued the schedule that is to be canceled.

#### NEWSPAPER PUBLICATION

**630.70 Newspaper publication.** (a) Whenever a change is proposed to any schedule filed with the commission, a notice to the public of such proposed change shall be published once in each week for four successive weeks in a newspaper having general circulation in each county containing territory affected by the proposed change, which notice shall plainly state the changes proposed to be made in the schedule then in force and the time when the change will go into effect.

(1) Such publication must be made in a form and manner designed to be seen and understood by the customers affected by the proposed change. It is not required that such publication be made in the legal notice column of such newspapers nor that the complete text of the proposed revisions be shown.

(2) Publication must be completed prior to the effective date of the proposed revisions unless the commission shall otherwise order. The corporation or municipality shall file with the commission, not more than 15 days after the effective date of the change, proof that such publication has been made.

(3) A request that publication be waived is not required to be in any prescribed form, but it must clearly demonstrate the merit of the request.

(b) Each statement showing a change in the purchased gas adjustment shall be published at least once prior to its effective date. Proof of such publication shall be filed with the commission, not later than 15 days after the effective date.

**BILL INSERTS**

**630.80 Bill inserts.** (a) Each public utility company other than a waterworks corporation, billing other than by postcard and serving more than 25,000 customers, shall furnish to its customers a narrative description of the essential elements affecting them of each proposed major rate change, by bill inserts to be included with the next utility bills mailed commencing not later than seven days after the rates are filed.

(b) The narrative description shall include the following:

(1) The commission may approve, modify or reject any or all of the proposed tariff changes. Among other things, the commission's determination may require revisions of the proposed amount of the increases applicable to particular classifications of service, or changes in rates applicable to those classifications for which no increase is proposed by the company.

(2) Information as to the time and place of hearings may be obtained by calling the New York State Public Service Commission:

Residents of New York City calling area: 488-4300  
All other residents of New York State: 1-800-522-8707

(c) Applications for waiver of the requirements for such mailing may be granted upon a sufficient showing.

**Historical Note**

Sec. repealed, filed June 12, 1976; new filed Aug. 18, 1976; amd. filed Oct. 3, 1978 eff. Oct. 3, 1978. Amended (b)(2).

**630.81-630.88****Historical Note**

Secs. repealed, filed June 12, 1972 eff. immediately.

**EXHIBIT V**



RECEIVED

OCT 17 1994

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC MAIL ROOM

In the Matter of )  
 )  
Implementation of Sections 3(n) and ) PR Docket No. 94-108  
the Communications Act )  
 )  
Regulatory Treatment of Mobile Services )  
\_\_\_\_\_ )

JOEL P. BRAINARD, being duly sworn, deposes and says  
that:

1. I am currently Chief of Regulatory Economics in the  
Office of Regulatory Economics of the New York State Department  
of Public Service, Three Empire State Plaza, Albany, New York  
12223.

2. I received a B.A. in Mathematics from Oberlin  
College in 1962. In 1967, I received an M.S. from Massachusetts  
Institute of Technology in the field of Civil Engineering, with  
coursework in Operations Research and Management Science. From  
1968 to 1970, I taught Mathematics at Talladega College in  
Alabama. From 1972 to 1974, I worked as a consultant to the  
Agency for International Development (AID). My work for AID  
focused on understanding the dynamics of growth in Colombia and,  
in particular, how government policy could affect the income,  
employment, and nutrition of low income families by affecting the  
character of this growth. I received my Ph.D. from Cornell in  
1976 in the field of Civil Engineering, with a minor in  
Operations Research. Since June 1979, I have been an economist

Exhibit V

and manager in the Office of Regulatory Economics in the New York State Department of Public Service.

I. Summary and Conclusions

3. I have reviewed the analysis presented in the Affidavit of Professor Jerry A. Hausman. In the Affidavit presented here, I identify and discuss the deficiencies in his analysis. In summary, I have found that the deficiencies in Professor Hausman's analysis are so serious that his analysis cannot be relied upon to draw conclusions about the effect of price regulation on either the prices of cellular services or the penetration of cellular services in New York or the other large MSAs that he has studied.

II. Critique of Professor Hausman's Analysis

4. Professor Hausman begins by stating his conclusion that the regulation of cellular service prices leads to higher cellular prices (Hausman Affidavit at page 3, paragraph 7). He further asserts that his econometric analysis demonstrates that regulation is the most important single factor explaining the high cellular prices in regulated areas.

5. Professor Hausman presents a number of analyses in support of his contentions. His first is based on information in Table 1 of his Affidavit. In this Table, he lists his estimates of average, representative prices for cellular service, ranked from highest to lowest for the ten largest MSAs. He also indicates which MSAs are located in states that he believes regulate cellular service prices.

6. There are two significant errors in this approach. These errors also undermine his econometric analysis, which he presents later in his Affidavit.

7. First, Professor Hausman incorrectly concludes that New York State engages in "price regulation."<sup>1</sup> New York State has the authority to regulate the prices of cellular service providers. However, the manner in which it exercises its authority cannot be reasonably construed as active price regulation. Historically, the NYSPSC has accepted prices as filed by the cellular carriers and has not actually inserted itself into the price setting process. Unless there are complaints, carrier prices are presumed to be reasonable. Complaints from competitors are rare, and typically involve anticompetitive practices. Professor Hausman's erroneous conclusion is especially damaging to his analysis, since he lists the New York MSA as the one having the highest cellular rate of any of the ten largest MSAs.

8. Second, the manner in which Professor Hausman computes representative prices<sup>2</sup> which can be used for comparisons among MSAs is flawed. Actual data from cellular service providers in New York State, as reported to the New York State DPS, reveal that the average price paid for cellular

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<sup>1</sup>Regulation is not, of course, an all or nothing proposition. In fact, regulation may simply be more vigorous in areas and at times when abuse of market power may be more likely.

<sup>2</sup>Professor Hausman based his price estimates in part on 160 minutes of usage per month for up to a one-year-contract.

service in the New York MAS is more than 25 percent less than that shown by Professor Hausman. This price estimate is based on cellular service providers' total revenue for cellular service in the New York MSA, divided by the number of subscribers, using 1993 data.<sup>3</sup> The most recent data suggests that current prices are lower.

9. Because Professor Hausman ignores many factors that should be considered when determining representative prices paid by consumers, it is reasonable to conclude that not only is his price estimate for the New York MSA not representative, but that his procedure for estimating all the MSA prices is also flawed. Based on my experience monitoring cellular carriers in New York, attempting to determine representative cellular service prices on the basis of a tariff or a price plan, such as Professor Hausman has done, is of quite limited value. To minimize measurement errors and to get an accurate measure that can be used to compare prices among MSAs, some effort must be taken to consider and account for differences in service offerings that customers themselves consider important. For example, customers are concerned not only with the "regular" price for a particular plan, but whether there are also promotional discounts which might provide for free air time or a discount off the fixed

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<sup>3</sup>If Professor Hausman's price estimate were representative of prices in New York, he would have to explain why the MSA with the highest price is not in a state that has actively inserted itself into the price-setting process. Alternatively, if his price is not representative of prices in New York, then his procedure for estimating prices for all MSAs is called into question. For reasons I will discuss, I conclude the latter is the case.

monthly charges. Customers are also interested in what kinds of features are available or included for free in a particular plan, such as a cellular phone or other bundled services. For example, some cellular service providers offer plans that include, for a nominal fee, a variety of roaming services that would be more expensive to purchase separately from the bundled offering. And, of course, customers are concerned about the quality of reception and how this varies over the service territory, especially within areas where they make frequent calls.<sup>4</sup> Also, the length of the service contract may affect what should be used as a representative price. Finally, some providers market plans at a substantial discount to groups and not to individuals. Professor Hausman ignored many factors that directly affect the price paid by consumers for commonly purchased service plans, and did not adjust for differences in service offerings and the quality of service that may exist among MSAs. The measurement error that results biases Professor Hausman's elasticity estimate toward zero in the regression in his Appendix 4.

10. The second analysis offered by Professor Hausman in support of his proposition that regulation causes higher prices is based on a rather simple regression. Some of the problems with his regression model are obvious from the deficiencies already noted; his data for prices and which states regulate

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<sup>4</sup>Improved service quality has obvious cost consequences that can be expected to affect the overall service offering price, just as a free phone has cost consequences.

prices do not appear to be accurate.<sup>5</sup> In addition to deficiencies noted above, he failed to specify his model correctly, in part because he has failed to include in his econometric analysis cost variables that are likely determinants of price. For example, Professor Hausman's regression model does not include variables for labor costs, tax rates, the cost of acquiring cell sites, the cost of investing in new technology associated with making better use of the limited spectrum in densely populated areas, the cost of providing service in areas with extensive underground transportation systems or other obstacles to satisfactory service quality and other scale factors that may affect cost per subscriber such as size of service territory and number of subscribers. This is of some concern, since many of those who oppose the NYPSC's petition argued that cellular markets are competitive, yet prices in a competitive market should bear some reasonable relationship to costs such as these. They should also not be related to factors that do not affect cost, so it is interesting that one of the two variables

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<sup>5</sup>Also related to how Professor Hausman estimates representative prices is whether cellular service providers in states that regulate prices have found other ways to compete; if a firm cannot compete on price it may choose to compete in terms of features, service quality, or other aspects of its service offering. Professor Hausman does not examine this issue. If the regulation variable in his model is correlated with the levels of non-price competition, as one might expect if Professor Hausman is correct about the presence of competitive forces, then the estimated coefficient for the regulation variable is biased upward. While this does not provide support for price regulation, it is another reason why Professor Hausman's estimated impact of regulation may be overstated.

in Professor Hausman's regression is "Commute Time" which is not cost related (Hausman Affidavit, Appendix 1). This supports, if one were to treat Professor Hausman's model results as credible, the view that prices are not determined by cost, but by customers' willingness to pay.

11. Finally, even if he were correct that New York sets prices based on the cost and that prices are as he claims, his conclusion is analogous to the claim that policemen cause accidents because they tend to be observed at the scene of accidents. At the very least, Professor Hausman should control in his analysis for the possibility that the high prices, while associated with regulation, are not caused by regulation.<sup>6</sup>

12. Professor Hausman also performs other price regressions (Hausman Affidavit, Appendices 2 and 3) which suffer from the same deficiencies identified for the price regression in Appendix 1 of his Affidavit.<sup>7</sup>

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<sup>6</sup>Professor Hausman does not account for this simultaneity problem in his price regression and later, when he does address it in the demand regression shown in his Appendix 4, he does not do so with respect to the endogeneity of regulation.

<sup>7</sup>The results shown in Appendices 2 through 4 are based on a panel of data (data for the MSAs over a number of years) as opposed to data for only one year. One possible advantage of using a panel data set is that it may allow one to control for MSA specific unobservable effects (observable effects should be incorporated directly) (see "Panel Data and Unobservable Individual Effects," Econometrica, Vol. 49, No. 6, November 1981 by Jerry A. Hausman and William E. Taylor.) However, the regressions in Appendices 2 through 4 only account for MSA invariant, time effects.

13. Professor Hausman asserts that "...regulation restricts the ability of cellular companies to set company specific rates to cause greater usage of cellular service." (Hausman Affidavit at 7, paragraph 17) It is not entirely clear what Professor Hausman means by this statement. If he is suggesting that regulation in New York State does not allow cellular service companies to set their own rates based on market conditions, he is mistaken. If he is suggesting that regulation in New York State does not allow cellular service companies to engage in unreasonable discriminatory pricing, he is correct. The NYPSC remains concerned about discriminatory pricing that results from an abuse of market power, and this form of regulation should not result in higher prices.<sup>8</sup>

15. Professor Hausman's second major claim is that the regulation of cellular service results in lower demand (penetration rates) for cellular service. He reaches this conclusion separate and apart from his conclusion about the effect of regulation on prices.

16. Professor Hausman begins his analysis of this conclusion by presenting a simple tabulation of penetration rates for the ten largest MSAs, again coded according to whether he believes the cellular prices in a particular MSA are regulated by the state.

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<sup>8</sup>In general, the NYPSC allows cellular companies to offer an unlimited variety of rate plans so long as they are offered on a non-discriminatory basis.



17. If one corrects for the incorrect coding of New York State as a state that engages in vigorous price regulation, the results are somewhat ambiguous, and clearly indicate that other important factors must be at work other than simply whether a state engages in price regulation.

18. Professor Hausman also presents the results of a regression model as support for his view that penetration rates are adversely affected by regulation. Again, this model suffers from serious simultaneity bias. Professor Hausman correctly attempts to account for endogeneity of price (Hausman 10, paragraph 23). He recognizes that changes in demand may affect price. He attempts to account for this by using instrumental variables, including the other regressors and the average price across other "Top 30 MSAs" (Hausman Affidavit, Appendix 4). However, in this model, as in his price regression, he has not addressed the simultaneity problem due to the endogeneity of regulation. In particular he has not used instrumental variables to account for the obvious possibility that continued regulation may be appropriate when duopolies could abuse their market power and consequently constrain demand and that such continued regulation is not responsible for higher prices and lower penetration. Professor Hausman's failure to account for this possibility is an especially significant deficiency given the